

STATE OF SOUTH CAROLINA)	BEFORE THE CHIEF PROCUREMENT OFFICER
COUNTY OF RICHLAND)	
)	DECISION
In the Matter of Protest of:)	
)	CASE No. 2011 - 117
)	
Troy & Banks, Inc.)	
)	
)	
USC-IFB-1866-DH)	POSTING DATE: May 25, 2011
Telecom Audit for USC-Beaufort)	
<u>Phone System</u>)	MAILING DATE: May 25, 2011

This matter is before the Chief Procurement Officer (“CPO”) pursuant to a letter of protest from Troy & Banks, Inc. (“Troy & Banks”) filed April 29, 2011 under the provision of Section 11-35-4210(1)(b) of the South Carolina Consolidated Procurement Code (“Code”). With this invitation for bids (“IFB”), the University of South Carolina (“USC”) attempts to procure a vendor to review current telecom expenses and seek refunds for overpayments made by USC Beaufort campus. [Exhibit 1, IFB] Following two amendments and an award posting date extension, USC posted a statement of award to Nolen, Nyman & Hamrick (“Nolen”) on April 4, 2011. [Exhibit 2, Amendment One; Exhibit 3, Amendment Two; Exhibit 4, Award Posting Date Extension; Exhibit 5, Statement of Award.] Troy & Banks challenges that decision.

The CPO conducted an administrative review without a hearing. This Decision is based on the official procurement file documents and the applicable law.

NATURE OF PROTEST

Troy & Banks’ letter of protest is attached and incorporated herein by reference.

DISCUSSION

Section 11-35-4210(1)(b) of the Code provides in relevant part:

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer...within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code...(Emphasis added)

In order to be timely, the protest must be in writing and received by the CPO within the above timeframe. Section 11-35-4210(2)(b). The Code defines “days” to mean calendar days and specifies how a period of time prescribed by the Code is to be calculated. Section 11-35-310(13).

In this case, the statement of award to Nolen was posted on April 4, 2011. Therefore, any protest was due to the CPO by at least 5:00 PM on April 14, 2011. However, Troy & Banks did not file its protest of this award with the CPO until April 29, 2011.

The South Carolina Procurement Review Panel (“Panel”) has repeatedly held that the time for filing cannot be waived. See In Re: Protest of Jones Engineering Sales, Inc., Case No. 2001-8 (finding that the CPO did not have jurisdiction to rule on the protest issue because the time for filing protests of the solicitation is jurisdictional and may not be waived); In Re: Protest of National Cosmetology Ass’n, Case No. 1996-17 (finding that “where the appeal is not taken within the time provided, jurisdiction cannot be conferred by consent or by waiver”); In Re: Protest of Vorec Corporation, Case No. 1994-9 (finding that a protest of award was untimely when it was filed one day after the deadline established by the Code prior to its amendment). The Panel has explained its rationale for why this time limit is jurisdictional and cannot be waived as follows:

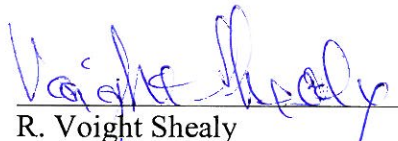
[I]t is essential to the operation of government that challenges its purchasing decisions be limited. If the time for filing protests can be waived, the state will be unable to determine with certainty when it can enter into a contract with one vendor for vital goods and services without the danger of being liable to another vendor.

In Re: Protest of Oakland Janitorial Services, Inc., Case No. 1988-13.

Here Troy & Banks filed its protest beyond the time allowed under the Code. Accordingly, the CPO does not have the authority to hear this protest, and this protest must be dismissed as untimely filed.

DETERMINATION

For the aforementioned reasons, the protest is dismissed.



R. Voight Shealy
Chief Procurement Officer
for Supplies and Services

May 25, 2011
Columbia, SC.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised October 2010)

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the 2010 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2010 S.C. Act No. 291, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).



TROY & BANKS
Utility and Telecommunication Consultants

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April 25, 2011

Voight Shealy
Chief Procurement Officer
1201 Main Street Suite 600
Columbia, SC 29201

Sent via U.S. Certified Mail

***RE: Protest of Award of Contract to
Nolen, Nyman & Hamrick
USC-IFB-1866-DH -
Telecom Audit***

Dear Mr. Shealy:

In accordance with section 11-35-4210 of the South Carolina Procurement Code, Troy & Banks, Inc. respectfully submits this protest of the contract award referred to above.

A copy of the Notice of Award is enclosed. It is dated April 4, 2011.

The Notice shows the successful bidder's fee for the services to be provided under the contract. The total fee for Item 1 is 55% and there is a scaled contingency fee for Item 2.

The bid provided by Troy & Banks, Inc. offered a total compensation for Item 1 of 30%. The offer for Item 2 was a scaled contingency fee that decreased as the amount of monthly reductions increased.

The Troy & Banks bid provided extensive references from customers.

The Troy & Banks bid demonstrates extensive experience in working with municipal corporations, including cities, states and school districts.

By experience, references, results and price, Troy & Banks is clearly the most responsive and responsible bidder, with the lowest cost.

Sincerely,
TROY & BANKS, Inc.

BY:


Thomas T. Ranallo, President

TTR/mbm



UNIVERSITY OF SOUTH CAROLINA

April 4, 2011

STATEMENT OF AWARD

Bidder's right to protest as listed in section 11-35-4210 in the South Carolina Consolidated Procurement Code applies to this award. Protest to be filed with:

Voight Shealy
Chief Procurement Officer
1201 Main Street Suite 600
Columbia, SC 29201

Solicitation Number: USC-IFB-1866-DH

Issue Date: December 23, 2010

Opening Date: February 9, 2011

Description: Telecom Audit at USC-Beaufort

Awarded to: Nolen, Nyman & Hamrick
PO Box 36962
Rock Hill, SC 29732

Estimate Potential Award Amount: \$65,000.00

Award Amount:

Item 1 – Compensation for Refunds:
55% of Total Refund Percentage

Item 2 – Compensation for Permanent Reductions:
50% for \$25,000 or less in Monthly Reductions
55% for \$25,001 to \$50,000 in Monthly Reductions
60% for \$50,001 to \$100,000 in Monthly Reductions
65% for \$100,001 and greater in Monthly Reductions


Damon Hightower
Procurement Officer